

No. 13523

United States
Court of Appeals
for the Ninth Circuit.

ESTATE OF WALLACE CASWELL, Deceased;
JENNIE J. CASWELL, Administratrix,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

and

ESTATE OF CHARLES HENRY CASWELL,
Deceased; EARL W. CASWELL, Adminis-
trator,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

Petitions to Review Decisions of The Tax Court
of the United States

FILED
FEB 11 1953



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Deceased; EARL W. CASWELL, Adminis-
trator,

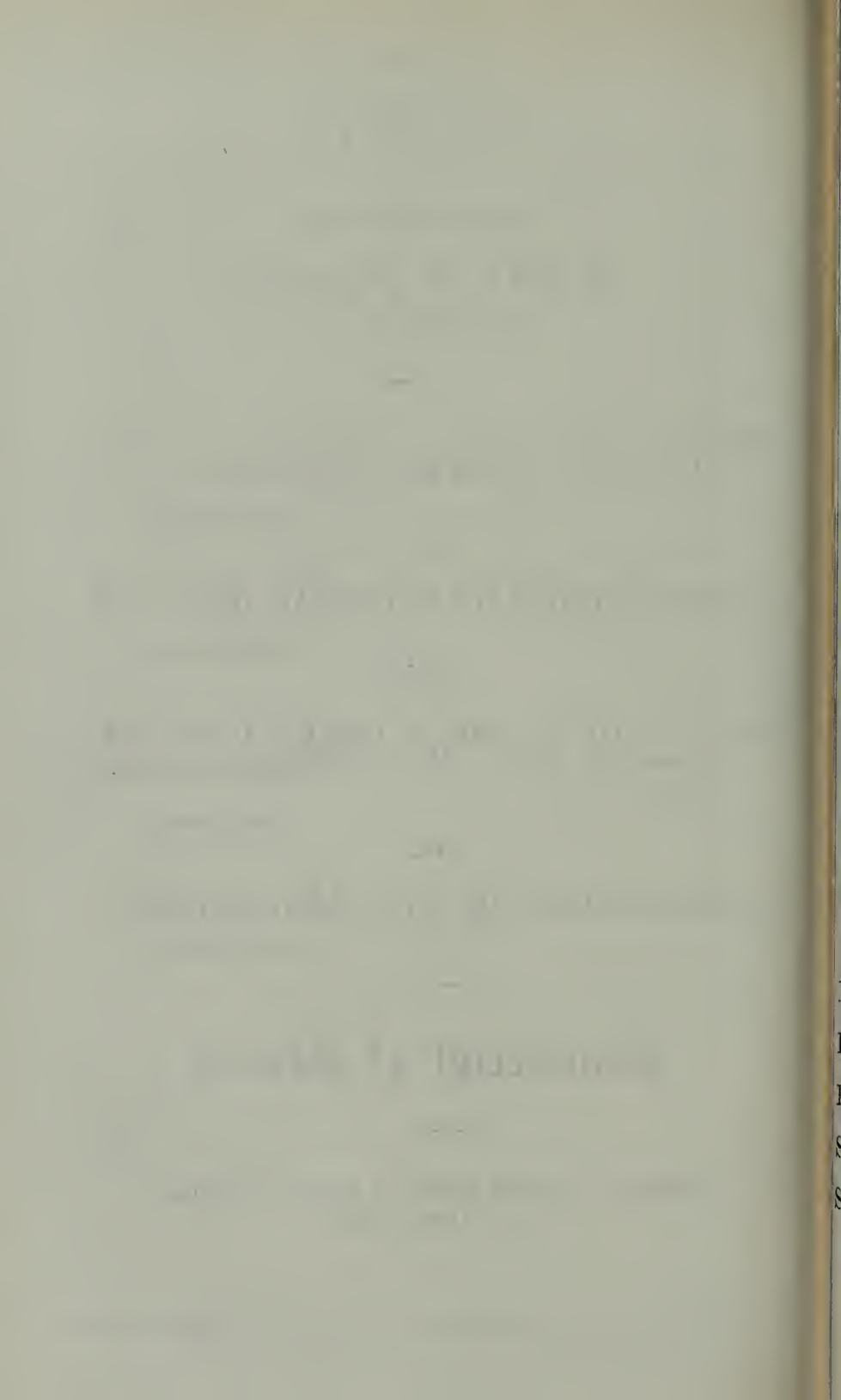
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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Answer	17
Appearances	1
Certificate of the Clerk	67
Decision, Docket No. 27017	40
Decision, Docket No. 27018	41
Docket Entries	3
Findings of Fact and Opinion	20
Motion to Consolidate for Briefing and Hearing	71
Order Re	71
Petition for Redetermination	5
Ex. A—Notice of Deficiency	9
Petition for Review, Docket No. 27017	60
Petition for Review, Docket No. 27018	65
Praecipe for Record	65
Statement of Points and Designation of Record	69
Stipulation of Facts	42

	INDEX	PAGE
Ex. No. 1—Turlock Co-operative Growers Certificate for Commercial Re- serve Fund		50
3—Balance Sheet as of January 31, 1946		52
4—Agreement, Dated February 9, 1942		55
5—Letters, Dated September 22, 1949, and September 28, 1949...		57
6—Financial Statement, January 31, 1950		59

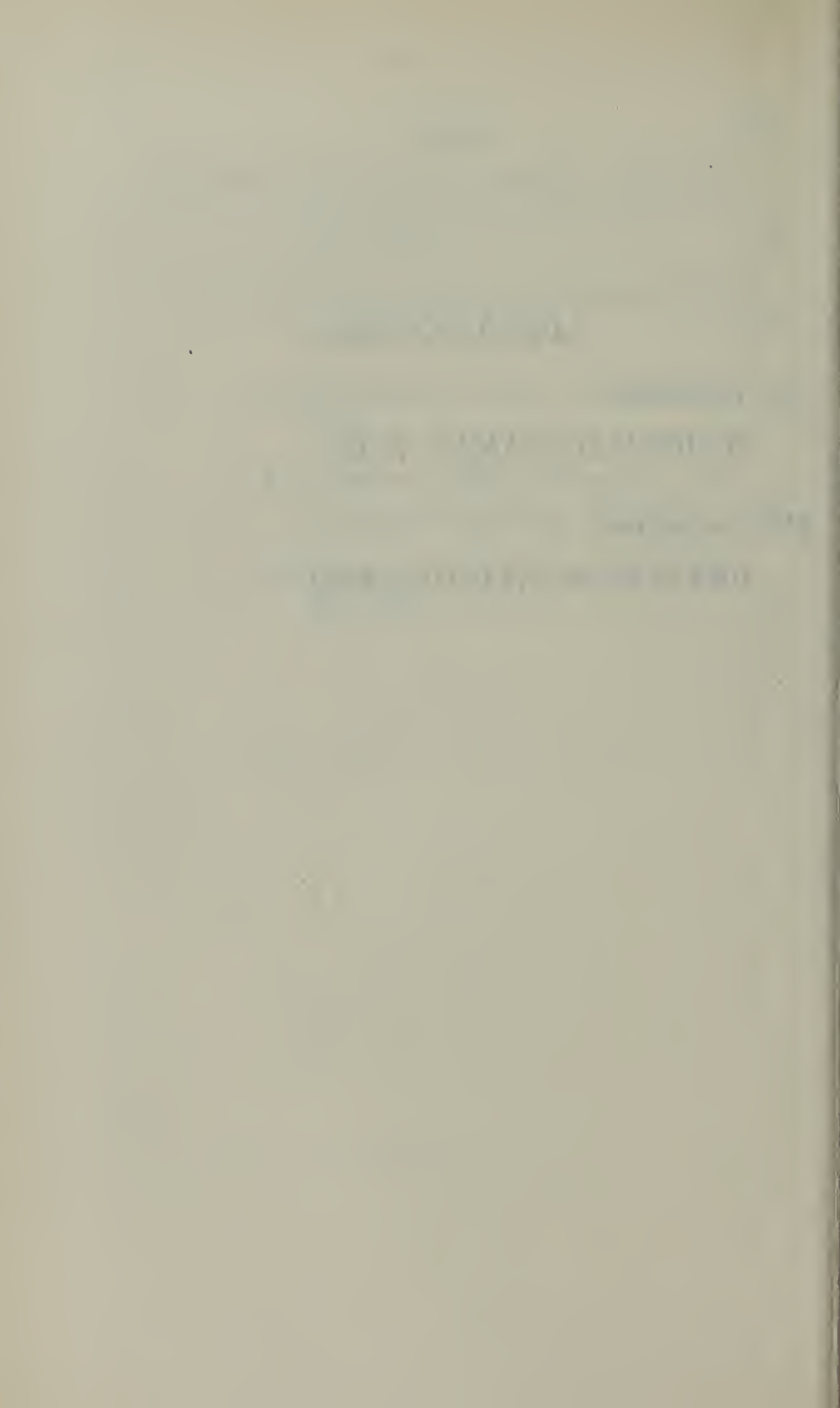
APPEARANCES

For Petitioner:

WAREHAM SEAMAN, ESQ.

For Respondent.

CHARLES W. NYQUIST, ESQ.



The Tax Court of the United States

Docket No. 27017

ESTATE OF WALLACE CASWELL, Deceased,
 JENNIE J. CASWELL, Administratrix,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
 Respondent.

DOCKET ENTRIES

1950

- Feb. 27—Petition received and filed. Taxpayer notified. Fee paid.
- Feb. 27—Request for Circuit hearing in San Francisco, Calif. filed by taxpayer. 3/15/50 Granted.
- Feb. 28—Copy of petition served on General Counsel.
- Mar. 28—Answer filed by General Counsel.
- Mar. 28—Request for hearing in San Francisco, Calif. filed by General Counsel.
- Apr. 4—Copy of answer and request served on taxpayer. San Francisco, California.
- Aug. 31—Hearing set, November 1, 1950, San Francisco, California.
- Nov. 13—Hearing had before Judge Turner on merits, counsel's motion to consolidate with docket 27018 granted. Stipulation of facts filed. Petitioner's brief December 28,

1950

1950, Respondent's brief February 28,
1951, Petitioner's reply March 30, 1951.

Dec. 5—Transcript of hearing November 13, 1950,
filed.

Dec. 26—Brief filed by taxpayer.

1951

Feb. 20—Reply brief filed by General Counsel.

Mar. 30—Reply brief filed by taxpayer. Copy
served.

1952

Jan. 18—Opinion rendered, Turner, Judge. Deci-
sion will be entered under Rule 50. Copy
served.

Feb. 12—Motion for entry of decision for respond-
ent filed by respondent. 2/13/52 Denied.

Mar. 11—Respondent's computation filed.

Mar. 13—Hearing set April 9, 1952 on respondent's
computation.

Apr. 4—Consent to respondent's computation for
entry of decision filed.

May 5—Decision entered. Judge Turner, Divi-
sion 8.

May 8—Order amending caption of the Opinion
promulgated January 18, 1952 entered.

Aug. 4—Petition for review by U. S. Court of
Appeals, Ninth Circuit, with assignments
of error filed by taxpayer.

Aug. 4—Praecipe for record filed by taxpayer.

Aug. 5—Proof of service of notice of filing peti-
tion for review filed.

Aug. 5—Proof of service of notice of filing prae-
cipe for record filed.

[Title of Tax Court and Cause.]

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (San Francisco Division: IRA:90-D: DRU) dated December 5, 1949, and as a basis of his proceeding alleges as follows:

1. The petitioner is a fiduciary, with residence at Ceres, California. As executrix of the Estate of Wallace Caswell, deceased, successor to Wallace Caswell to whom the notice of deficiency is addressed, the fiduciary has authority to execute this petition. The return for the period here involved was filed with the collector for the First District of California.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on December 5, 1949.

3. The tax controversy is income tax for the calendar year 1945 and in the amount of \$7,828.97.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) Respondent erred in increasing the income from farming in the amount of \$1,070.45 in this amount of depreciation.

(b) Respondent erred in adding to the income of petitioner the amount of \$2,348.92 as the face value of Turlock Co-operative Growers Association Certificates issued to the petitioner in 1945.

(c) Respondent erred in adding to the income of Caswell Brothers, Ceres, California, a partnership in which petitioner has a one-half interest, the amount of \$7,121.78 as the face value of Turlock Co-operative Growers Association Certificates issued to the partnership in 1945.

(d) Respondent erred in disallowing depreciation in the amount of \$2,777.21 in arriving at the ordinary net income of Caswell Brothers, Ceres, California, a partnership in which petitioner has a one-half interest.

(e) Respondent erred in allowing only the sum of \$815.02 as actual deductions in lieu of standard deduction.

(f) Respondent erred in his allocation of income between separate property and community property for the year 1945.

5. The facts upon which petitioner relies are as follows:

(a) With reference to the error alleged in paragraph 4(a) above:

(1) Among the assets of the petitioner were farm buildings, grapes, auto, ladders and other equipment and pipeline.

(2) The details of fact supporting this assignment of error is too extensive to set forth herein with particularity, since the basis for this adjustment is not set forth in the notice of deficiency.

(b) With reference to the error alleged in paragraph 4(b):

(1) Petitioner was a member of the Turlock Co-operative Growers Association in Turlock, California.

(2) During 1945 petitioner received from said co-operative pursuant to its bylaws, certificates in the face amount of \$2,348.92.

(3) The Co-operative neither on the face of the certificates nor in its bylaws provides for a fixed maturity date of these certificates.

(c) With reference to the error alleged in paragraph 4(c):

(1) Petitioner had a one-half interest in the partnership of Caswell Brothers, Ceres, California, the other one-half being in the name of his brother, Charles Henry Caswell.

(2) This partnership was a member of the Turlock Co-operative Growers Association, Turlock, California.

(3) During 1945 said partnership received from said co-operative pursuant to its bylaws certificates in the face amount of \$7,121.78.

(4) The Co-operative neither on the face of the certificate nor in its bylaws provides for a fixed maturity date of these certificates.

(d) With reference to the error alleged in paragraph 4(d):

(1) Among the assets of the partnership identified in 5(c); immediately preceding, were building, machines, fences, pipeline and pump.

(2) The detail of facts supporting this assignment of errors is too extensive to set forth

herein with particularity, since the basis for this adjustment is not set forth in the notice of deficiency.

(e) With reference to the error set forth in paragraph 4(e):

(1) During 1945 petitioner had other allowable actual deductions, such as contributions, for income tax purposes.

(f) With reference to the error alleged in paragraph 4(f):

(1) Throughout the year 1945 petitioner was married to Jennie Caswell and they lived and worked together as husband and wife.

(2) It was the intention of petitioner and his wife that all income to such status be deemed community income.

Wherefore petitioner prays that The Tax Court of the United States shall hear this proceeding and determine:

1. That there is no deficiency in income tax due from the petitioner for the calendar year of 1945.

2. That the petitioner have such relief as is meet and just in the premises.

/s/ WAREHAM SEAMAN,
Attorney.

EXHIBIT A

Treasury Department
Internal Revenue Service

74 New Montgomery Street
San Francisco 5, California

December 5, 1949.

San Francisco
IRA :90-D :DRU

Mr. Wallace Caswell,
Post Office Box 7,
Ceres, California.

Dear Mr. Caswell:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1945, discloses a deficiency of \$1,828.97 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday and Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, San Francisco 5, California, for the attention of Confer-

ence Section. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEO. J. SCHOENEMAN,
Commissioner,

By F. M. HARLESS,
Internal Revenue Agent in
Charge.

Enclosures:

Statement

Form 1276

Form 870

Exhibits A, B and C.

SAN FRANCISCO
IRA:90-D:DRU

STATEMENT

Mr. Wallace Caswell
Post Office Box 7
Ceres, California

Tax Liability for the Taxable Year Ended December 31, 1945

	Deficiency
Income Tax	\$7,828.97

In making this determination of your income tax liability, careful consideration has been given to your protests dated January 20, 1949, and February 17, 1949.

Adjustments to Net Income

Net income as disclosed by return.....		\$13,932.69
Unallowable deductions and additional income:		
(a) Farm income	\$ 58.50	
(b) Partnership income	12,331.43	
(c) Dividends	1,069.74	
(d) Rents	471.00	
(e) Oil lease	71.67	
(f) Standard deduction	500.00	14,502.34
		<hr/>
Total.....		\$28,435.03
Nontaxable income and additional deductions:		
(g) Taxes	\$ 660.77	
(h) Net capital loss	154.25	815.02
		<hr/>
Net income as adjusted		\$27,620.01

Explanation of Adjustments

(a) Income from farming is increased by \$58.50 as follows:

Total farm income reported.....		\$2,922.26
Additions to income:		
(1) Depreciation	\$1,070.45	
(2) Turlock Co-operative Growers' Association Certificates	2,348.92	
(3) Taxes	1,256.54	4,675.91
		<hr/>
Total farm income as corrected.....		\$7,598.17
Your community share as computed in Exhibit B, attached....		1,519.63
Amount reported on your return (1/2 of \$2,922.26).....		1,461.13
		<hr/>
Adjustment—increase in income		\$ 58.50

(1) Deduction for depreciation is reduced by \$1,070.45 as shown in Exhibit A, attached.

(2) It is disclosed that you and your wife, Mrs. Jennie J. Caswell, received certificates from the Turlock Co-operative Growers' Association during the taxable year as follows:

Number of Certificate	Date Issued	Face Value
1111.....	2-1-1945	\$ 140.38
1112.....	2-1-1945	789.72
1230.....	11-1-1945	1,418.82
		<hr/>
Total.....		\$2,348.92

On the basis of available information, it is held that the fair market value of the certificates is the face value in the sum of \$2,348.92. Inasmuch as your books and records are maintained on the cash basis, the fair market value of the certificates, or \$2,348.92, is included in taxable income.

(3) Deduction of \$1,256.54 for state income taxes of \$1,296.54 and sales taxes of \$50.00 is disallowed as not representing an allowable farm expense but such taxes are considered in item (g) below.

(b) Partnership income from Caswell Brothers, Ceres, California, is increased by \$12,331.43 as shown below:

Ordinary net income reported on partnership return.....\$19,842.59

Additions to income:

(1) Turlock Co-operative Growers' Association Certificates	\$7,121.78	
(2) Depreciation	2,777.21	9,898.99

Ordinary net income of partnership as corrected..... 29,741.58

Your 50% distributive share..... 14,870.79

Add: Income from other partnerships..... 11,091.57

Partnership income as corrected.....\$25,962.36

Your separate and community share as computed in Exhibit B, attached..... 22,769.89

Amount reported on your return..... 10,438.46

Adjustment—increase in income.....\$12,331.43

(1) It is held that the fair market value of certificates received from the Turlock Co-operative Growers' Association during the taxable year is the face value of the certificates, or \$7,121.78 as shown below:

Certificate No. 1110 issued 2-1-1945.....\$2,731.86

Certificate No. 1229 issued 11-1-1945..... 4,389.92

Total.....\$7,121.78

Inasmuch as the books and records of the partnership are maintained on the cash basis, the amount of \$7,121.78 representing the fair market value of the above-mentioned certificates is included in taxable income.

(2) Excessive depreciation claimed in the amount of \$2,777.21 is disallowed as shown in Exhibit C, attached.

(c), (d) and (3) Income from dividends, rents and oil lease is increased by the amounts of \$1,069.74, \$471.00 and \$71.67, respectively, due to reallocation of separate and community income as shown in Exhibit B, attached.

(f) The standard deduction of \$500.00 claimed on your return is disallowed and in lieu thereof there is allowed a deduction of \$660.77 for taxes as shown in item (g) below.

(g) Deduction of \$660.77 is allowed for taxes as follows:

	Total	Jennie J. Caswell	Wallace Caswell
California income tax	\$1,141.54	\$570.77	\$570.77
Iowa income tax	65.00	0.00	65.00
California sales taxes	50.00	25.00	25.00
Totals.....	<u>\$1,256.54</u>	<u>\$595.77</u>	<u>\$660.77</u>

(h) You allocated one-half of a net capital loss of \$308.50, or \$154.25, to your wife, Mrs. Jennie J. Caswell. Since it is disclosed that the assets sold were your separate property, the entire loss of \$308.50 is allowed on your return resulting in a decrease in income of \$154.25.

Computation of Tax

Net income	\$27,620.01	
Less: Surtax exemption.....	500.00	
Surtax net income	<u>\$27,120.01</u>	
Surtax on \$27,120.01		\$11,434.41
Net income	\$27,620.01	
Less: Normal tax exemption	500.00	
Normal tax net income.....	<u>\$27,120.01</u>	
Normal tax, 3% of \$27,120.01.....		813.60
Correct income tax liability.....		<u>\$12,248.01</u>
Income tax disclosed by return, page 1—line 6 Original, Account No. 3027571 First California District		4,419.04
Deficiency of income tax.....		<u>\$ 7,828.97</u>

EXHIBIT "A"
Depreciation

Description	Acquired	Cost	Prior Depreciation	Remaining Cost From 1/1/1945	Remaining Life From 1/1/1945	Depreciation Allowable 1945
Farm Bldg.	1916	\$5,785.00	\$4,859.40	\$ 925.60	5½ yrs.	\$ 173.55
20 acres Tokay Grapes.....	1916	4,000.00	2,800.00	1,200.00	12 yrs.	100.00
Auto	6/30/41	1,100.00	770.00	330.00	1½ yrs.	220.00
Orchard ladders	6/30/41	320.00	112.00	208.00	6½ yrs.	32.00
Orchard props	6/30/41	800.00	280.00	520.00	6½ yrs.	80.00
Pipe line	1945	3,621.21	0.00	3,621.21	20 yrs.	181.06
Depreciation allowable						<u>\$ 786.61</u>
Depreciation per return						1,857.06
Adjustment						<u>\$1,070.45</u>

Depreciation claimed per return on assets which are not shown above have not been allowed as costs basis was unascertainable.

EXHIBIT "B"

Allocation of Separate and Community Income

	Total Income	Jennie J. Caswell	Wallace Caswell
Farm Income	\$7,598.17		
Separate income—60% of \$7,598.17.....		\$4,558.90	
Community income—40% of \$7,598.17.....		1,519.63	\$ 1,519.63
Totals.....		<u>6,078.53</u>	<u>1,519.63</u>
Partnership Income	25,962.36		
Separate income \$10,000.00 plus 60% of \$15,962.36			19,577.42
Community income—40% of \$15,962.36.....		3,192.47	3,192.47
Totals.....		<u>3,192.47</u>	<u>22,769.89</u>
Dividend Income	3,565.80		
Separate income—60% of \$3,565.80.....			2,139.48
Community income—40% of \$3,565.80.....		713.16	713.16
Totals.....		<u>713.16</u>	<u>2,852.64</u>
Amount reported on your return (½ of \$3,565.80)			<u>1,782.90</u>
Adjustment—increase			1,069.74
Rental Income	1,570.00		
Separate income—60% of \$1,570.00.....			942.00
Community income—40% of \$1,570.00.....		314.00	314.00
Totals.....		<u>314.00</u>	<u>1,256.00</u>
Amount reported on your return (½ of \$1,570.00)			<u>785.00</u>
Adjustment—increase			471.00
Oil Lease	238.90		
Separate income—60% of \$238.90.....			143.34
Community income—40% of \$238.90.....		47.78	47.78
Totals.....		<u>47.78</u>	<u>191.12</u>
Amount reported on your return.....			<u>119.45</u>
Adjustment—increase			<u>\$ 71.67</u>

EXHIBIT "C"
Depreciation

Description	Acquired	Cost	Prior Depreciation	Remaining Cost 1/1/1945	Remaining Life From 1/1/1945	Depreciation Allowable 1945
Farm Bldg.	1929	\$14,700.00	\$ 7,071.06	\$7,628.94	9 years	\$ 847.66
Farm Machines	Various	20,941.00	15,700.03	5,240.97	9 years	582.33
Fences, pipe line	Various	3,209.50	1,969.50	1,240.00	16 years	77.50
Pipe line	1945	226.40	0.00	226.40	20 years	11.32
Irrigation pump	1945	2,000.00	0.00	2,000.00	10 years	200.00
Total depreciation allowable						<u>\$1,718.81</u>
Depreciation claimed per return						4,496.02
Adjustment						<u>\$2,777.21</u>

Duly verified.

Received and filed T.C.U.S., February 27, 1950.

Served February 28, 1950.

[Title of Tax Court and Cause.]

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above petitioner, admits and denies as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the petition.

3. Admits that the tax in controversy is income tax for the calendar year 1945; denies the remaining allegations contained in paragraph 3 of the petition.

4 (a) to (f), inclusive. Denies the allegations of error contained in paragraph 4 (a) to 4 (f), inclusive, of the petition.

5 (a) (1). Admits the allegations contained in paragraph 5 (a) (1) of the petition.

(2) Denies the allegations contained in paragraph 5 (a) (2) of the petition.

(b) (1). Admits the allegations contained in paragraph 5 (b) (1) of the petition.

(2). Admits that during 1945 petitioner received from said co-operative certificates in the face amount of \$2,348.92; denies the remaining allegations contained in paragraph 5 (b) (2) of the petition.

(3). Denies for lack of information the allegations contained in paragraph 5 (b) (3) of the petition.

(c) (1). Admits that Wallace Caswell had a one-half interest in the partnership of Caswell Brothers, Ceres, California, the other one-half being in the name of his brother, Charles Henry Caswell.

(2). Admits the allegations contained in paragraph 5 (c) (2) of the petition.

(3). Admits that during 1945 said partnership received from said co-operative certificates in the face amount of \$7,121.78; denies the remaining allegations contained in paragraph 5 (c) (3) of the petition.

(4). Denies for lack of information the allegations contained in paragraph 5 (c) (4) of the petition.

(d) (1). Admits the allegations contained in paragraph 5 (d) (1) of the petition.

(2). Denies the allegations contained in paragraph 5 (d) (2) of the petition.

(e) (1). Denies the allegations contained in paragraph 5 (e) (1) of the petition.

(f) (1). Admits the allegations contained in paragraph 5 (f) (1) of the petition.

(2). Denies the allegations contained in paragraph 5 (f) (2) of the petition.

6. Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioner's appeal denied.

/s/ CHARLES OLIPHANT,

Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel,

T. M. MATHER,
CHARLES W. NYQUIST,

Special Attorneys, Bureau of
Internal Revenue.

Received and Filed T.C.U.S. March 28, 1950.

The Tax Court of the United States

No. 27017

ESTATE OF WALLACE CASWELL, Deceased,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

No. 27018

ESTATE OF CHARLES HENRY CASWELL,
Deceased,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated January 18, 1952.

FINDINGS OF FACT AND OPINION

The petitioners were members of a co-operative growers association through which they marketed their peaches. Under the marketing plan, the peaches were placed in a pool with peaches of like kind, grade and classification produced by other members. When the peaches were sold and the pool was closed, the net proceeds, less an association charge, were distributed to the members on the basis of participation. The association charge, after payment of general organization and association

expenses, was carried into a capital reserve and, in addition to the cash distributed, the members also received on the basis of participation in the selling pool, interest-bearing certificates representing their interests, in the capital reserve, which certificates they were free to sell, exchange and assign. Held, that the petitioners, upon receipt of certificates, received and realized income to the extent of the fair market value of the certificates received. Held, further, that the fair market value of the certificates was equal to face.

WAREHAM C. SEAMAN, ESQ.,

For the Petitioners.

CHARLES W. NYQUIST, ESQ.,

For the Respondent.

OPINION

Turner, Judge:

The proceeding at Docket No. 27017, the Estate of Wallace Caswell, involves a deficiency in income tax for 1945 of \$7,828.97, and that at Docket No. 27018, the Estate of Charles Henry Caswell, a deficiency for the same year, of \$5,278.10.

The primary issue presented is whether income was realized by the taxpayers in 1945 upon the receipt of certificates issued by a co-operative association upon its commercial reserve fund and if income was so realized, the question arises as to the fair market value of the certificates at the time they were received by the Caswells. Other issues raised in the pleadings have been adjusted between the

parties and effect will be given to the adjustments made under Rule 50.

The facts have been stipulated and are found as stipulated.

Wallace Caswell, until his death on December 3, 1949, and for the years material hereto, was a resident of Ceres, California. He filed his income tax return for the taxable year 1945 with the collector of internal revenue for the first district of California. After his death, his wife, Jennie J. Caswell, was duly appointed and qualified as administratrix for her husband's estate. In the year 1945, Wallace Caswell filed his return on a cash receipts and disbursements basis and reported all income as the community income of himself and wife, with whom he was married at all times material hereto.

Charles Henry Caswell, until his death on June 26, 1949, and for the years material hereto, was a resident of Ceres, California. He filed his income tax return for the taxable year 1945 with the collector of internal revenue for the first district of California. After his death, Earl W. Caswell was duly appointed and qualified as administrator of the estate of Charles Henry Caswell, deceased. In the year 1945, Charles Henry Caswell filed his return on the cash receipts and disbursements basis and reported all income as community income of himself and wife, Helen C. Caswell, with whom he was married at all times material hereto.

Wallace and Charles Henry Caswell each had a one-half interest in the partnership, Caswell Brothers, of Ceres, California. This partnership was en-

gaged in growing peaches which it marketed through the Turlock Co-operative Growers Association of which it was a member.

The Turlock Co-operative Growers Association, sometimes referred to herein as The Co-op, or Turlock, is a California farmers' co-operative marketing association located at Modesto, California. During 1945, and so far as appears during all other years, Turlock was exempt from income tax under section 101 of the Internal Revenue Code.

The Co-op conducted business with its members pursuant to a crop contract. The contract in form was a contract of purchase. It covered all of the crop or crops to be produced for designated years on specified land. "Terms and Condition" 4, 5 and 6 were as follows:

4. The association shall pool the commodities of the Grower with commodities of like kind, grade and classification purchased by the Association under contracts similar to this, and the price to be paid to the Grower therefor shall be based on the average price per pound at which all commodities of like kind, grade and classification shall have been sold by the Association.

5. The Association, if market and financial conditions in its judgment justify, may make advances on account of payment on the commodities purchased by it hereunder, the amount of such advances being based on market and

financial conditions and the quality of the commodities.

6. The Association agrees to sell said commodities in bulk in its natural state as delivered, or at its option, to can, preserve, manufacture, process and pack said commodities, or to procure the same to be done, and thereafter sell the same as rapidly as possible and pay the proceeds over to the Grower, named in this and similar contracts, first deducting any advances made the Grower, and each Grower's pro rata share of the cost of receiving, handling, manufacturing, canning, storing, selling, advertising, and other expenses of the Association, and an Association charge, to and in such an amount as shall be determined by the Board of Directors of the Association. From this Association charge, organization and other general Association expenses shall be deducted, and with the balance a commercial reserve shall be created.

Whenever any commercial reserve is no longer needed for Association purposes, the Association shall distribute it among the Growers in the proportions to which they are entitled, determined on the basis of the amount retained from each Grower to create such a reserve.

By Section 3 of Article XII of Turlock's bylaws it was provided that a non-assignable Certificate of Membership should be issued to "each member"

who has signed a marketing agreement in the required form. By Section 5 it was provided that each member should have one vote. A membership fee of \$10 was payable under Section 8 and the fees so paid were to be retained as a membership fund in cash or in specified assets and by Section 6 it was provided that the property rights and interest of the members in the membership fund so established should be equal, each member having "one unit of property right and interest." All other rights, interests and participations were to be according to the patronage or participation of the member in the crop marketing program.

The association charge which under provision 6 of the crop contract was to be deducted by the Co-op when making payment to the member for his crop was covered by Section 9 of Article XII of the bylaws and reads as follows:

From the Association charge provided for in the marketing agreement, organization and other general association expenses shall be deducted and commercial reserves created, and deductions made for the interest on or retirement of the advance fund in the discretion of the Association.

During the taxable year and up to March 8, 1949, the provision of the bylaws covering the creation and maintenance of the commercial reserve also dealt with in provision 6 of the marketing contract was as follows:

The association shall create and maintain a commercial reserve. This reserve shall be de-

ducted from the Association charge and shall be used to purchase necessary equipment and property, to provide working capital and for other uses of the Association, including the purchase of stock of any corporation organized for the purpose among other things of manufacturing or selling the products of this Association, and with whom this Association shall contract for the manufacturing of such products.

Certificates shall be issued bearing interest at the rate of six per cent per annum for and on account of the respective interest herein of the members of the Association. If the members do not elect to continue co-operative marketing to the end of the period provided in the marketing agreement, the directors shall sell the assets of the Association, and after deducting and retaining the entire membership fund for distribution equal to memberships, shall distribute the proceeds proportionately to the owners of the certificates then unredeemed.

During 1945, Turlock issued the partnership, Caswell Brothers, two certificates "for and on account of" its interest in the Commercial Reserve Fund. Certificate 1110 in the amount of \$2,731.86 was issued February 1, 1945, and was for the 1943 crop. Certificate 1229 in the amount of \$4,389.92 was for the 1944 crop. Up to the date of the trial herein neither certificate had been redeemed. The certificates bore interest at 6 per cent per annum and in form were as follows:

Incorporated March 2, 1929

Turlock Co-operative Growers
An Incorporated Co-operative Association
Organized Under the Laws of the
State of California.

This Certifies That
is the owner of Dollars
of the Commercial Reserve Fund of the
Turlock Co-operative Growers

Said Commercial Reserve Fund and the interest
therein represented by this
Commercial Reserve Fund Certificate

is subject to the provisions of the Articles of Incorporation and Bylaws of this Association and shall be distributed only in accordance with the provisions thereof.

Interest at the rate of per annum shall be paid upon the face value represented by this certificate from date first issued, until called for redemption.

This certificate is transferable upon the books of the Association by the owner or by duly authorized agent upon surrender of this certificate properly endorsed.

Series.....

Date first issued

Witness the seal of the Association and the signatures of its duly authorized officers.

Date.....

.....

President.

.....

Secretary-Treasurer.

Wallace Caswell, as an individual was also a member of Turlock, and during 1945 three certificates were issued to him reflecting his interest in the Commercial Reserve Fund. Certificate 1111 in the amount of \$140.38 and Certificate 1112 in the amount of \$789.72 were issued on February 1, 1945, and were for the 1943 crop. Certificate 1230 in the amount of \$1,418.82 was issued on November 1, 1945, and was for the 1944 crop. Up to the date of the trial herein none of these certificates had been redeemed. These certificates bore 6 per cent interest per annum and were in the form set out above.

The Co-op operates on the basis of a fiscal year ending January 31. Its balance sheet as of January 31, 1946, was as follows.

Assets

Current Assets:		
Cash on Hand and in Bank.....		\$82,201.38
Accounts Receivable—General.....	\$316,364.26	
Accounts Receivable—Growers.....	9,819.33	
Subsidy Receivable.....	10,469.67	
Total.....	<u>336,653.26</u>	
Less: Reserve for Bad Debts.....	16,828.08	319,825.18
Inventories:		
Canned Goods—Net Realizable Value.....	173,596.12	
Materials and Supplies.....	191,085.16	364,681.28
Total Current Assets.....		<u>\$766,707.84</u>
Prepaid Expenses:		
Taxes and Insurance.....		16,576.39
Plant Reconditioning.....		48,617.30
Sundry Prepaid Expenses.....		2,867.95
Total Prepaid Expenses.....		<u>68,061.64</u>

Fixed Assets:	Cost	Reserve for Depreciation	Net Book Value
Land	9,500.00	9,500.00
Buildings	253,212.46	41,232.22	211,980.24
Machinery & Equipment.....	324,023.89	134,750.73	189,273.16
Autos and Trucks	18,095.20	13,843.56	4,251.64
Furniture and Fixtures	5,633.51	4,023.07	1,610.44
Lub Boxes and Crates.....	61,852.41	35,261.55	26,590.86
Field and Orchard Equipment.....	5,524.55	2,544.71	2,979.84
Total Fixed Assets	<u>677,842.02</u>	<u>231,655.84</u>	<u>446,186.18</u>
Other Assets:			
Stock in Berkeley Bank for Cooperatives.....			12,100.00
Investment—Central Cooperative, Inc.			750.95
Trade Marks			330.00
Investment—Canners Service, Inc.			10,000.00
Advances to Fruit Machinery.....			13,500.00
Total Other Assets.....			<u>36,680.95</u>
Total Assets.....			<u>\$1,317,636.61</u>

Liabilities and Members' Equities

Current Liabilities

Notes Payable—Berkeley Bank for Cooperatives	\$181,915.27	
Current Installment—Facility Loan.....	15,000.00	
Contracts Payable	5,738.00	
Accounts Payable—Trade	66,011.33	
Accounts Payable—Brokers	13,829.23	
Amount due on Sales and Management Contract	4,832.61	
Called Certificates—Not Paid	980.78	
Sundry Accruals:		
Provision to Ship		
Goods Billed	\$28,269.37	
Payroll	1,878.51	
Interest	16,581.04	
Payroll Taxes	1,980.85	
Sundry Accruals	617.65	49,327.42
Total Current Liabilities.....		\$337,634.64

Due Growers:

Total Pool Proceeds—Tentative— Exhibit "C"	769,191.79	
Less:		
Advances to Jan. 31, 1946....	417,869.89	
Retains (Tentative) 10% of Proceeds.....	76,919.18	494,789.07
Balance due Growers		274,402.72
Facility Loan—Berkeley Bank for Cooperatives	150,000.00	
Less: Current Installment shown above....	15,000.00	135,000.00

Members' Equity Accounts:

Membership Fees	760.00	
Retains—1944 and Prior Pools (Schedule "A-1")	492,920.07	
Retains—1945 Pools (10% of Net Proceeds—Tentative)	76,919.18	
Total Members' Equity Accounts.....		570,599.25
Total Liabilities and Members' Equities.....		\$1,317,636.61

Turlock renders a financial statement to each of its members at the end of each of its fiscal years but the statement given to members is not broken down into details to the extent shown above.

During a crop year but before harvesting, the Co-op makes advances to its members. When the crop is harvested and delivered to it, the Co-op pays its members in cash as it in turn sells the crop or goods canned from the crop, after deducting for the advances made, less a percentage, usually at 10 per cent, which is withheld by the Co-op and which ultimately is represented by the issuance of certificates. Upon receipt by the Co-op, the crop produced by a member is mixed with similar crops produced by other members and becomes part of one of the pools for that year. As these pools are liquidated by the Co-op, the above-mentioned payments are made. After a pool is liquidated to the extent of 90 per cent or 95 per cent, the pool is closed and certificates are issued for the amounts withheld plus an estimated 10 per cent of the sales price on the remaining 5 per cent or 10 per cent of the pool unsold at the time of its closing. This unsold portion of the pool is carried over to following years and sold without burden of any further expense, the actual expenses of sale being carried entirely by the current year pools.

At the conclusion of the distribution of each commodity pool, a statement is rendered to each of the growers showing the total amount received for the commodity marketed, less any charges that might have been made to him, also less the Reserve Fund

Certificate which up to this time had been issued on the basis of 10 per cent of the net return of the commodity marketed.

The Co-op, from time to time, purchases certain quantities of raw materials from non-members in order to complete pack orders with respect to certain commodities, but the quantities so purchased are small in comparison to the materials supplied by the grower members.

If the financial condition of the Co-op is such that the Board of Directors concludes that a redemption can be made of outstanding certificates, a call is made for the oldest outstanding certificates. Prior to the amendment of Article XIII of the association's bylaws in 1949, certificates were issued and redeemed on the basis of their individual dates of issuance; the amendment requires that they now be issued and redeemed in yearly series. For all times material hereto, the Co-op has paid those certificates which it redeemed on the basis of 100 cents on the dollar. In 1941 the Co-op redeemed the certificates which it issued in 1935 and 1936, and a portion of those issued in 1937. In 1943 it redeemed the remainder of the certificates issued in 1937 and also those issued in 1938 and a portion of those issued in 1939. In 1944 it redeemed the remainder of the certificates issued in 1939 and all of those issued in 1940. In 1945 no certificates were redeemed. In 1946 the Co-op redeemed the certificates issued during the first eight months of 1941. In 1947 it redeemed the remainder of the certificates issued in 1941 and all of those issued in 1942. In

1948 it redeemed certificates issued during the first five months of 1943. No certificates have been redeemed since 1948.

According to the books of Turlock six transfers of certificates were made in 1944 and thirteen in 1945. The circumstances, reasons or considerations for these transfers are not shown of record and do not appear on the books of the Co-op.

Interest rates on the certificates are now fixed by the Board of Directors of the Co-op. Certificates issued currently carry interest at 3 per cent, whereas earlier certificates, including those for the year 1945, carried an interest rate of 6 per cent.

All of the assets of Wallace Caswell and Charles Henry Caswell were inherited by them from their father, prior to 1945, or were the proceeds of rents, profits or increments from such assets. Their interest in Caswell Brothers, a partnership, produced distributive income to each of them in 1945 in the amount of \$14,870.79 which included their interest in the issuance of Turlock Growers Association Certificates in the amount of \$7,121.78 during that year. Personal services were also rendered by them in the production of said income. Another asset, their interest in the partnership of W. & C. H. Caswell produced distributive income to each of them in 1945 in the amount of \$1,091.57, and to the production of such income they contributed personal services. Wallace Caswell and Charles Henry Caswell were members of a partnership, Caswell Manufacturing Company of Cherokee, Iowa, to which they rendered no personal services, and in

1945 they each had distributive income in the amount of \$10,000 from said partnership which was separate, as distinguished from community income. During the year 1945, Wallace Caswell also received as income, the amount of \$7,598.17 from the operation of a farm to which he contributed personal services, and Charles Henry Caswell received income in the amount of \$1,975.91 from the operation of a farm to which he contributed personal services. All of said personal services were in the conduct of farming operations.

The fair market value of the certificates issued by Turlock in 1945 on its Commercial Reserve Fund to Wallace Caswell and to the partnership, Caswell Brothers, was equal to the face value of the respective certificates.

In his determination of the deficiencies herein the respondent included in gross income the face amount of the certificates issued in the taxable year. In his notices of deficiency the amounts so included in gross income were shown as representing the fair market value of the said certificates.

The argument of the petitioners is twofold, the first contention being that since they reported their income on the cash basis and since at no time during the taxable year did they actually receive or become unqualifiedly entitled to receive payment of the moneys in the commercial reserve covered by the certificates issued, they did not constructively, or otherwise, receive or realize income by reason of their receipt of the certificates. Their second contention is that in any event the certificates had no

fair market value when issued and accordingly there was upon their receipt no realization of gain under section 111 (b) of the Internal Revenue Code¹ as determined and claimed by the respondent.

As to the argument on constructive receipt, it is to be noted that there are statements in some of the decided cases which may well be regarded as authority for the proposition that moneys carried to capital reserves by co-operative associations under comparable terms and conditions have already been constructively received by the members of the Co-op since it is said that such funds in reality belong to the members and not the Co-op. *San Joaquin Valley Poultry Producers Association vs. Commissioner*, 136 F(2d) 382; *Colony Farms Co-operative Dairy, Incorporated*, 17 T.C.....; *George Bradshaw*, 14 T.C. 162; and *Harbor Plywood Corporation*, 14 T.C. 158. And, there might even be stronger reasons for applying such a rule in this case since for 1945, at least, Turlock was exempt from income tax under section 101 of the Internal Revenue Code, whereas some, if not all, of the co-ops involved in the cases cited were not exempt. In *Dr. P. Phillips Cooperative*, 17 T.C., however, a co-operative which was subject to

¹Sec. 111. Determination of Amount of, and Recognition of, Gain or Loss.

* * *

(b) Amount Realized. The amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received.

tax, we declined to extend the conduit theory to cover the moneys carried into a reserve where it was not shown that the certificates issued against the reserve were issued "pursuant to a pre-existing obligation or liability," and in *George Bradshaw*, supra, after acknowledging the conduit doctrine, we held that it was the issuance of the notes by the Co-op which fixed the rights of the patrons in the moneys covered thereby and not the closing by the Co-op of the transactions from which the moneys in question were derived.

In the instant cases the respondent does not rely on the conduit theory nor on any other variation of the theory of constructive receipt but has determined and contends that the Caswells in payment for their peaches, and in addition to the cash distributed, received other property, namely, the certificates, and under section 111 (b) supra, received and realized income to the extent of the fair market value of the certificates at the time of issue, and further that the fair market value of the certificates was equal to face. It is thus apparent that no issue has been joined here involving any question of constructive receipt of the moneys in the commercial reserve.

The decision, in our opinion, must be for the respondent. Whether the certificates received be likened to debentures or evidences of indebtedness or to shares of preferred stock or be said to evidence a more direct ownership of the designated amount of the commercial reserve, they were none the less securities evidencing valuable rights or in-

terest in the commercial reserve which belonged to the Caswells and which without restriction, other than that the transfers thereof be recorded on Turlock's books, could be sold, traded in or assigned and not only could such certificates be assigned and transferred but the record indicates that transfers thereof were usual and customary, six of such transfers having been recorded in 1944 and thirteen during 1945, the taxable year herein. And, while they had no specified due date or dates they bore interest at 6 per cent per annum on the face amount and there is no showing or claim that the interest was not regularly paid when due. Furthermore, the record also indicates a practice on the part of Turlock of retiring or redeeming outstanding certificates at face before too many years had elapsed. Presumably, subsequent additions to the commercial reserve from the proceeds of later crop pools would adequately provide for the capital needs of the association and thereby permit the prior certificates to be retired or redeemed. It is our opinion, and we conclude, that the certificates meet the requirements of section 111 (b), supra, and that they represented income to the petitioners at the time of issue to the extent of their fair market value.

As to the fair market value the decision also must be for the respondent. The petitioners rest their claim of no fair market value on three things (1) that the certificates had no specified due date, (2) that although assignable, they were not negotiable instruments; and (3) that two local bankers, if called as witnesses, would have testified that from

a banking standpoint the certificates were not classified as marketable, that their purchase would have been on a speculative basis and in instances where they were accepted as collateral for loans they were accepted as "additional collateral" only.

To the contrary, Turlock's balance sheet gives every indication that the value back of the certificates covered them at face. The interest provided was at a very attractive rate. There was no indication that Turlock had ever defaulted on interest payments and it has an apparent record of redemption of such certificates without undue delay. Furthermore, in light of the transfers of certificates recorded on Turlock's books in 1944 and 1945, we think it reasonable to assume that the certificates were traded and exchanged even though the consideration or occasion for the transfers recorded is not shown. It is shown also that Turlock was known in the community as being in sound condition and well managed. In such circumstances we think it clear that the certificates from the date of their issuance not only had fair market value but the record gives no leeway for saying that such fair market value was less than face. See and compare *George Bradshaw, supra*, and *P. Phillips, et al.*, 17 T.C.....

Decisions will be entered under Rule 50.

Served January 18, 1952.

The Tax Court of the United States
Washington

Docket No. 27017

ESTATE OF WALLACE CASWELL, Deceased,
Jennie J. Caswell, Administratrix,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the Findings of Fact and Opinion of the Court promulgated January 18, 1952, the respondent on March 11, 1952, having filed a proposed recomputation of the tax involved, in accordance therewith, and the petitioner on April 4, 1952, having filed an acquiescence in such recomputation, it is

Order and Decided: That there is a deficiency in income tax for the year 1945 in the amount of \$7,828.97.

[Seal] /s/ BOLON B. TURNER,
Judge.

Entered May 5, 1952.

Served May 5, 1952.

The Tax Court of the United States
Washington

Docket No. 27018

ESTATE OF CHARLES HENRY CASWELL,
Deceased, Earl W. Caswell, Administrator,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the Findings of Fact and Opinion of the Court promulgated January 18, 1952, the respondent on March 11, 1952, having filed a proposed recomputation of the tax involved, in accordance therewith, and the petitioner on April 4, 1952, having filed an acquiescence in such recomputation, it is

Order and Decided: That there is a deficiency in income tax for the year 1945 in the amount of \$5,278.10.

[Seal] /s/ BOLON B. TURNER,
Judge.

Entered May 5, 1952.

Served May 5, 1952.

[Title of Tax Court and Cause.]

Docket Nos. 27017 and 27018

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel, that the following facts shall be taken to be true and received in evidence in the above-entitled proceedings, together with all exhibits attached hereto and made a part hereof, and that it shall constitute all facts, other than admitted in the answer to be presented in this proceeding.

Petitioner in docket number 27017 hereby concedes the issues raised in subsections (a), (d) and (e) of paragraph 4 of the petition.

Petitioner in docket number 27018 hereby concedes the issues raised in subsections (b) and (c) of paragraph 4 of the petition.

1. The Estate of Wallace Caswell, by Jennie J. Caswell, Administratrix, is the duly qualified petitioner in docket number 27017. Wallace Caswell, until his death on December 3, 1949, and for the years material hereto, was a resident of Ceres, Stanislaus County, California.

He filed his income tax return for the taxable year 1945 with the Collector of Internal Revenue for the First District of California.

2. In the year 1945, Wallace Caswell filed his return on the cash receipts and disbursements basis and reported all income as the community income

of himself and wife, Jennie J. Caswell, with whom he was married at all times material hereto.

3. The Estate of Charles Henry Caswell, by Earl W. Caswell, Administrator, is the duly qualified petitioner in docket number 27018. Charles Henry Caswell, until his death on June 26, 1949, and for the years material hereto, was a resident of Ceres, Stanislaus County, California.

He filed his income tax return for the taxable year 1945 with the Collector of Internal Revenue for the First District of California.

4. In the year 1945, Charles Henry Caswell filed his return on the cash receipts and disbursement basis and reported all income as the community income of himself and wife, Helen C. Caswell, with whom he was married at all times material hereto.

5. Wallace Caswell and Charles Henry Caswell each had a one-half interest in the partnership of Caswell Brothers, Ceres, California. This partnership was a member of the Turlock Co-operative Growers Association. During the year 1945, the Caswell Brothers were issued two Certificates of the Turlock Co-operative Growers Association as follows: Certificate 1110 issued February 1, 1945, in the amount of \$2,731.86. Certificate 1229 issued November 1, 1945, in the amount of \$4,389.92. Certificate 1110 was issued for the 1943 crop of peaches and certificate 1229 was issued on the 1944 crop of peaches supplied by the partnership. Neither certificate has to date been redeemed. These certificates were in the form of exhibit 1 attached hereto, and called for interest at the rate of 6%.

6. During the year 1945, Wallace Caswell was issued three certificates of the Turlock Co-operative Growers Association as follows: Certificate number 1111, issued February 1, 1945, in the amount of \$140.38. Certificate number 1112 issued February 1, 1945, for \$789.72. Both of these were on the 1943 crop, and neither one has to date been redeemed. Certificate number 1230 was issued on November 1, 1945, in the amount of \$1,418.82 on the 1944 crop of peaches, and this has not to date been redeemed. These certificates were in the form of exhibit 1 attached hereto and call for interest at the rate of 6%.

7. The Turlock Co-operative Growers (referred to here as "the Co-operative") is a farmers' co-operative exempt under Section 101 of the Internal Revenue Code during the years of issue, and is located at Modesto, California. Its articles of incorporation and bylaws are attached hereto as Exhibit 2. Exhibit 2 reflects an amendment to Article XIII of the bylaws which was adopted on March 8, 1949. Prior thereto and during the year 1945, Article XIII was worded as follows:

"The association shall create and maintain a commercial reserve. This reserve shall be deducted from the Association charge and shall be used to purchase necessary equipment and property, to provide working capital and for other uses of the Association, including the purchase of stock of any corporation organized for the purpose among other things of manu-

facturing or selling the products of this Association, and with whom this Association shall contract for the manufacturing of such products.

“Certificates shall be issued bearing interest at the rate of six per cent per annum for and on account of the respective interest herein of the members of the Association. If the members do not elect to continue co-operative marketing to the end of the period provided in the marketing agreement, the directors shall sell the assets of the Association, and after deducting and retaining the entire membership fund for distribution equal to memberships, shall distribute the proceeds proportionately to the owners of the certificates then unredeemed.”

The Co-operative operates on a fiscal year basis ending January 31, and its balance sheet as of January 31, 1946, obtained by the respondent, is attached hereto as Exhibit 3. It executes crop contracts with its members for the purchase of crops grown by the members, and a copy of the form used for such contract is attached hereto as Exhibit 4.

8. During a crop year but before harvesting, the Co-operative makes advances to its members. When the crop is harvested and delivered to it, the Co-operative pays its members in cash as it in turn sells the crop or goods canned from the crop, after deducting for the advances made, less a percentage, usually at 10%, which is withheld by the Co-opera-

tive and which ultimately is represented by the issuance of certificates. Upon receipt by the Co-operative, the crop produced by a member is mixed with similar crops produced by other members and becomes part of one of the pools for that year. As these pools are liquidated by the Co-operative, the above-mentioned payments are made. After a pool is liquidated to the extent of 90% or 95%, the pool is closed and certificates are issued for the amounts withheld plus an estimated 10% of the sales price on the remaining 5% or 10% of the pool unsold at the time of its closing. This unsold portion of the pool is carried over to following years and sold without burden of any further expense, the actual expenses of sale being carried entirely by the current year pools.

9. Attached hereto and marked Exhibit 5 are copies of two letters, signed by officers of two local banks. The statements contained therein represent the opinions of the writers and they would so testify if they were called as witnesses in these proceedings.

10. The recording of the transfers of these certificates by assignment on the books of the Co-operative do not indicate the circumstances surrounding the transfer such as settlement of estate, marital settlements, credit settlements, etc., nor the amount received by the member for the transfer on a sale. Six such transfers were made in the year 1944 and thirteen in the year 1945.

11. The Co-operative Association renders a financial statement to each of its members at the end of each of its fiscal years. These statements are in the form of the statement attached hereto as Exhibit 6. At the conclusion of the distribution of each commodity pool, a statement is rendered to each of the growers showing the total amount received for the commodity marketed, less any charges that might have been made to him, also less the Reserve Fund Certificate which up to this time had been issued on the basis of 10% of the net return of the commodity marketed.

12. The Co-operative, from time to time, purchases certain quantities of raw materials from non-members in order to complete pack orders with respect to certain commodities, but the quantities so purchased are small in comparison to the materials supplied by the grower members.

13. If the financial condition of the Co-operative is such that the Board of Directors concludes that a redemption can be made of outstanding certificates, a call is made for the oldest outstanding certificates. (Prior to the amendment of Article XIII of the association's bylaws in 1949, certificates were issued and redeemed on the basis of their individual dates of issuance; the amendment requires that they now be issued and redeemed in yearly series.) For all times material hereto the Co-operative has paid those certificates which it redeemed on the basis of 100 cents on the dollar. In 1941 the Cooperative redeemed the certificates which it issued in 1935

and 1936, and a portion of those issued in 1937. In 1943 it redeemed the remainder of the certificates issued in 1937 and also those issued in 1938 and a portion of those issued in 1939. In 1944 it redeemed the remainder of the certificates issued in 1939 and all of those issued in 1940. In 1945 no certificates were redeemed. In 1946 the Co-operative redeemed the certificates issued during the first eight months of 1941. In 1947 it redeemed the remainder of the certificates issued in 1941 and all of those issued in 1942. In 1948 it redeemed certificates issued during the first five months of 1943. No certificates have been redeemed since 1948.

14. Interest rates on the certificates are fixed by the Board of Directors of the Co-operative. Certificates issued currently carry interest at 3%, whereas on earlier certificates and including those for the year 1945, the interest rate was 6%.

15. All of the assets of Wallace Caswell and Charles Henry Caswell were inherited by them from their father, prior to 1945, or were the proceeds of rents, profits or increments from such assets. Their interest in Caswell Brothers, a partnership, produced distributive income to each of them in 1945 in the amount of \$14,870.79 which included their interest in the issuance of Turlock Growers Association Certificates in the amount of \$7,121.78 during that year. Personal services were also rendered by them in the production of said income. Another asset, their interest in the partnership of W. & C. H. Caswell produced distributive

income to each of them in 1945 in the amount of \$1,091.57, and to the production of such income they contributed personal services. Wallace Caswell and Charles Henry Caswell were members of a partnership, Caswell Manufacturing Company of Cherokee, Iowa, to which they rendered no personal services, and in 1945 they each had distributive income in the amount of \$10,000 from said partnership which was separate, as distinguished from community income. During the year 1945, Wallace Caswell also received as income, the amount \$7,598.17 from the operation of a farm to which he contributed personal services, and Charles Henry Caswell received income in the amount of \$1,975.91 from the operation of a farm to which he contributed personal services. All of said personal services were in the conduct of farming operations.

16. In stipulating facts herein concerning the Turlock Co-operative Growers, respondent does not concede the relevancy of any such facts relating to years subsequent to 1945.

/s/ WAREHAM C. SEAMAN,
Attorney for Petitioners.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue, Counsel for Respondent.

EXHIBIT No. 1

[Commercial Reserve Fund Certificate]
[Void]

Incorporated March 2, 1929

1223

\$285.15

Turlock Co-operative Growers
An Incorporated Co-operative Association
Organized Under the Laws of the
State of California

This Certifies That ~~Julius Horning~~ Leask is the
owner of Two Hundred Eighty-five and 15/100 Dol-
lars of the Commercial Reserve Fund of the

Turlock Co-operative Growers

Said Commercial Reserve Fund and the interest
therein represented by this

Commercial Reserve Fund Certificate

is subject to the provisions of the Articles of Incor-
poration and Bylaws of this Association and shall
be distributed only in accordance with the provi-
sions thereof.

Interest at the rate of Six per cent per annum
shall be paid upon the face value represented by
this certificate from date first issued, until called
for redemption.

This certificate is transferable upon the books of the Association by the owner or by duly authorized agent upon surrender of this certificate properly endorsed.

Series 1942 "26"

Date first issued: September 1, 1943.

Witness the seal of the Association and the signatures of its duly authorized officers.

Dated: April 18, 1945.

1942 Tomatoes.

.....

Secretary-Treasurer.

/s/ ~~C. M. MOFFET,~~

President.

EXHIBIT No. 3

Turlock Cooperative Growers
Balance Sheet as at January 31, 1946

Assets

Current Assets:		
Cash on Hand and in Bank.....	\$82,201.38	
Accounts Receivable—General	\$316,364.26	
Accounts Receivable—Growers	9,819.33	
Subsidy Receivable	10,469.67	
Total	336,653.26	
Less: Reserve for Bad Debts.....	16,828.08	319,825.18
Inventories:		
Canned Goods—Net Realizable Value.....	173,596.12	
Materials and Supplies.....	191,085.16	364,681.28
Total Current Assets.....		\$766,707.84
Prepaid Expenses:		
Taxes and Insurance		16,576.39
Plant Reconditioning		48,617.30
Sundry Prepaid Expenses.....		2,867.95
Total Prepaid Expenses.....		68,061.64

Fixed Assets:	Cost	Reserve for Depreciation	Net Book Value
Land	9,500.00	9,500.00
Buildings	253,212.46	41,232.22	211,980.24
Machinery and Equipment.....	324,023.89	134,750.73	189,273.16
Autos and Trucks.....	18,095.20	13,843.56	4,251.64
Furniture and Fixtures.....	5,633.51	4,023.07	1,610.44
Lub Boxes and Crates.....	61,852.41	35,261.55	26,590.86
Field and Orchard Equipment.....	5,524.55	2,544.71	2,979.84
Total Fixed Assets.....	<u>677,842.02</u>	<u>231,655.84</u>	<u>446,186.18</u>
 Other Assets:			
Stock in Berkeley Bank for Cooperatives.....			12,100.00
Investment—Central Cooperative, Inc.			750.95
Trade Marks			330.00
Investment—Canners Service, Inc.			10,000.00
Advances to Fruit Machinery.....			13,500.00
Total Other Assets.....			<u>36,680.95</u>
Total Assets.....			<u>\$1,317,636.61</u>

TURLOCK COOPERATIVE GROWERS

Balance Sheet as at January 31, 1946

Liabilities and Members' Equities

Current Liabilities

Notes Payable—Berkeley Bank for Cooperatives	\$181,915.27	
Current Installment—Facility Loan.....	15,000.00	
Contracts Payable	5,738.00	
Accounts Payable—Trade	66,011.33	
Accounts Payable—Brokers	13,829.23	
Amount due on Sales and Management Contract	4,832.61	
Called Certificates—Not Paid	980.78	

Sundry Accruals:

Provision to Ship		
Goods Billed	\$28,269.37	
Payroll	1,878.51	
Interest	16,581.04	
Payroll Taxes	1,980.85	
Sundry Accruals	617.65	49,327.42

Total Current Liabilities.....\$337,634.64

Due Growers:

Total Pool Proceeds—Tentative— Exhibit "C"	769,191.79	
---	------------	--

Less:

Advances to Jan. 31, 1946....	417,869.89	
Retains (Tentative) 10% of Proceeds.....	76,919.18	494,789.07

Balance due Growers 274,402.72

Facility Loan—Berkeley Bank for Cooperatives	150,000.00	
Less: Current Installment shown above....	15,000.00	135,000.00

Members' Equity Accounts:

Membership Fees	760.00	
Retains—1944 and Prior Pools (Schedule "A-1")	492,920.07	

Retains—1945 Pools (10% of Net Proceeds—Tentative)	76,919.18	
Total Members' Equity Accounts.....		570,599.25
Total Liabilities and Members' Equities.....		<u>\$1,317,636.61</u>

I, hereby, certify the above to be a true and correct copy of an audit report issued to us by the Wayne Mayhew & Company, for the year 1945.

Signed L. E. NEEL, Secretary.

EXHIBIT No. 4

Duplicate

Turlock Co-operative Growers
Crop Contract

This Agreement, made this 9th day of February, 1942, between the Turlock Co-operative Growers, a non-profit, co-operative Association, incorporated under the laws of the State of California, hereinafter called the Association, and Caswell Brothers, hereinafter called the Grower, Witnesseth:

That the Association does hereby purchase and the Grower does hereby sell all of the crop or crops (hereinafter referred to as commodities) listed below to be produced during the years 1942-3-4 on the following described land in Stanislaus County, California, to wit:

50 Acres in N.W. 1/4 of Sec. 11, Township 4,
Range 9, Northeast 1/4

Ranch No. 1

Crops by commodities:

Midsummer Peaches: Acres 50.

(20 acres Paloras)

(15 acres Guams)

(15 acres Halfords)

At and for the prices net to the Grower determined as hereinafter set forth.

The Terms and Conditions printed on the back hereof are a part of this contract.

In Witness Whereof, the parties hereto have executed this contract in duplicate the day and year first above written.

TURLOCK CO-OPERATIVE
GROWERS,

By /s/ [Indistinguishable]
CASWELL BROTHERS,

By.....
Grower.

Address: Ceres, California.

.....
Witness to Grower's Signature.

Address:

EXHIBIT No. 5

[Copy]

Modesto Bank & Trust Co.
Modesto, California

September 22, 1949

Mr. W. P. Garrison,
Room 2, Black Building,
1115 Eye Street,
Modesto, California.

Dear Mr. Garrison.

Re: Turlock Co-operative Growers'
Certificates

We are familiar with the above-titled Certificates and in response to your inquiry, wish to advise.

These certificates are not acceptable to banks as collateral security for loans, which could not be granted on the basis of other satisfactory conditions. In a few instances of marginal cases these certificates will be taken with other security as additional collateral, but, never as a determining factor.

Under the Banking Laws of California we are prohibited from buying such Certificates, but, if it were permitted we would not consider purchasing them due to the fact they do not carry a guarantee value nor a redemption date.

It is our opinion that the purchase of the above Certificates would be on a speculative basis.

Yours very truly,

/s/ C. R. PETERSON,
Executive Vice President.

[Duplicate]

Bank of America

National Trust and Savings Association

Modesto, California,

September 28, 1949.

Mr. W. P. Garrison,
Room 2, Black Building,
1115 Eye Street,
Modesto, California.

Dear Mr. Garrison:

Re: Turlock Co-operative Growers

For several years, we have known and been rather intimately acquainted with the Commercial Reserve Fund Certificates issued to various and sundry growers of the Turlock Co-operative Growers.

It has not been our practice to accept these certificates as collateral to loans by reason of the fact that they do not possess specific maturity dates. It has always been our belief that the question of payment lies within the province of the Board of Directors. In other words, at the date of issue of said certificates, even though the balance sheets disclosed ample funds, yet by redemption period, if the corporation saw fit to use said funds for any other purpose in the operation of its business, then said payments would naturally be preferred.

We recognize the fact that these certificates are assignable.

We further recognize the fact that the Turlock Co-operative Growers, under the able management

of its officers, has made great strides in its field, and enjoys a magnificent reputation in the canning business; nevertheless, from a banking standpoint, the certificates are not classified as marketable securities. They, naturally, differ from any other common or preferred stock which are either listed on the local exchanges, or on the New York Stock Exchange.

Very truly yours,

A. E. PUCCINELLI,
Vice President & Manager.

AEP:VS

EXHIBIT No. 6

TURLOCK COOPERATIVE GROWERS

Financial Statement January 31, 1950

	Assets	
	1/31/49	1/31/50
Cash on Hand	\$ 113,530.67	\$ 56,991.20
Accounts Receivable	399,318.23	305,517.44
Inventory		
Canned Goods (less shipping).....	2,383,824.26	3,315,310.44
Material and Supplies	169,853.86	187,888.21
Real Estate, Plant and Equipment	761,220.42	811,155.70
Stock: Berkeley Bank for Cooperatives	29,200.00	32,800.00
Deferred Charges and Investments	75,945.86	127,540.23
	<u>\$3,932,893.30</u>	<u>\$4,837,203.22</u>
	<u>\$3,932,893.30</u>	<u>\$4,837,203.22</u>
	Liabilities and Net Worth	
Accounts Payable	\$ 106,691.10	\$ 449,606.90
Commodity Loan B.B.F.C.	1,702,059.31	1,846,195.29
Merchandising Loan B.B.F.C.	168,882.96	400,000.00
Facility Loan B.B.F.C.	140,000.00	187,000.00
Term Operating Loan	43,750.00	37,500.00

Reserve for Bad Debts and		
Sundry Accruals	38,942.13	29,526.40
Growers Undistributed Equities	921,593.80	882,557.81
Consigned Goods Loan		50,000.00
Net Worth		
Membership Fund	830.00	1,610.00
Commercial Reserve (including 1949 estimated reserve)	810,144.00	953,206.82
	<u>\$3,932,893.30</u>	<u>\$4,837,203.22</u>

[Endorsed]: Filed November 13, 1950.

[Title of Tax Court and Cause.]

PETITION FOR REVIEW BY THE UNITED
STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

I.

Jurisdiction

The Estate of Wallace Caswell, deceased, Jennie J. Caswell, Administratrix, your petitioner on review, hereinafter referred to as the "petitioner," respectfully petitions this honorable Court to review the decision of The Tax Court of the United States entered on the fifth day of May, 1952, and finding as follows: That there was a deficiency in the petitioner's income tax for the year 1945, in the amount of \$5,278.10 instead of no deficiency of such

taxes as claimed by the petitioner in the proceeding before the said Tax Court.

Your petitioner is a fiduciary acting for and on behalf of the estate of her deceased husband with offices at and residing at Ceres, Stanislaus County, California. Hereinafter the term "petitioner" denotes either the fiduciary or the deceased during his lifetime, whichever is appropriate. The respondent on review, hereinafter referred to as the "respondent," is the duly appointed, qualified, and acting Commissioner of Internal Revenue of the United States of America.

The income tax return in respect of which the aforementioned taxes were paid and in respect of which the aforementioned deficiency and tax liability arose was filed by your petitioner with the Collector of Internal Revenue for the First District of California, located in the City of San Francisco, State of California, which is located within the jurisdiction of the United States Court of Appeals for the Ninth Circuit.

Jurisdiction in the said Court of Appeals to review the above-described decision of The Tax Court of the United States is founded on sections 1141, 1142, and 1143 of the Internal Revenue Code (Pt. 1, 53 U.S. Statutes at L.; Title 26, United States Code), as amended by section 36, Act of June 25, 1948 (62 U.S. Statutes at L. 991).

II.

Nature of Controversy

During the year 1945 petitioner was engaged in the occupation of farming in Stanislaus County, California. A substantial portion of his crops consisted of peaches and were marketed through the Turlock Co-operative Growers located at Modesto, California, of which he was a member. Turlock Co-operative Growers Association, hereinafter called "co-operative," was a farmers' marketing co-operative organized under the laws of California and exempt under section 101 of the Internal Revenue Code. Approximately ninety per cent of the sale or market price of the peaches customarily was paid by the Co-operative to the petitioner and other member-suppliers during the crop year. The remaining ten per cent was usually, in the following year or two, represented by the issuance of Certificates of Indebtedness of the Co-operative to the petitioner. Such Certificates, showing no maturity date, were payable at the discretion of the directors of the Co-operative, with simple interest at six per cent per annum, payable when the certificates were redeemed. The first portion of those certificates issued in 1937 were redeemed in 1941. The last portion of the certificates issued in 1943 had not been redeemed by November 13, 1950, or twice the period before the redemption of the certificates of 1937.

Petitioner at all times material hereto had reported income on the basis of cash receipts and disbursements. Petitioner reported as income the proceeds of certificates in the year of redemption

rather than the face value at the date of issuance.

During the year 1945 the petitioner had one-half interest in a partnership to which was issued a certificate in the face amount of \$2,731.86 on the 1943 crop of peaches and a certificate in the face amount of \$4,389.92 on the 1943 crop of peaches. As an individual, the petitioner in 1945 was issued two certificates for the 1943 crop of peaches, one in the face amount of \$140.38 and the other in the face amount of \$789.72, and was also issued a certificate in the face amount of \$1,418.82 on the 1944 crop of peaches. None of the aforementioned certificates have been redeemed at the date of the hearing of this proceeding before the Tax Court of the United States on November 13, 1950.

The respondent determined that the amounts of the distributive shares were taxable as ordinary income to the petitioner in the year 1945, the year of issuance, as amounts realized from the sale of the crop pursuant to section 111(b), Internal Revenue Code. In the proceeding of the Tax Court of the United States for redetermination of the said deficiency, the case was submitted solely on a stipulation of facts, and no oral testimony was introduced by either party. That Court sustained the determination of the respondent.

The petitioner contended, pursuant to section 22(a), Internal Revenue Code, particularly with reference to section 29.22 (a), 7 Regulations 111, with reference to gross income of farmers, that the issuance of the certificates did not represent constructive receipt or the equivalent of cash, because petitioner had not become unqualifiedly entitled to re-

ceive payment of the face value of the certificate.

Petitioners, in the alternative, contended that the certificates had no fair market value when issued because of the absence of maturity date and the lack of an unqualified obligation on the part of the Co-operative to redeem the certificate, and for other reasons set forth. In the proceeding in the Tax Court of the United States that Court found that the certificates had a fair market value equal to the face amount of the certificates.

III.

Prayer

That the petitioner, being aggrieved by the findings of fact and conclusions of law contained in the findings of fact and opinion entered by the Tax Court of the United States in the said proceeding on January 8, 1952, under its docket No. 21017 and its decision entered pursuant thereto on May 5, 1952, prays that this honorable Court of Appeals may review the said findings of and conclusions of law and determine that they have been made and entered in error according to the following assignments of error.

IV.

The petitioner assigns as error the following acts and omissions of the Tax Court of the United States in the said proceeding:

1. The finding that the issuance of the Certificates of Indebtedness to the petitioner in 1945 represented income to him that year.

2. The finding that the fair market value of the Certificates of Indebtedness was equal to their face amounts at the date of issue in 1945.

/s/ WAREHAM C. SEAMAN,
SEAMAN & DICK,
Attorney for Petitioner.

Duly verified.

Received and filed T.C.U.S., August 4, 1952.

PETITION FOR REVIEW

No. 27018

[Clerk's note: A petition for review, assigning the same errors as set forth in the petition for review filed in Estate of Wallace Caswell, was filed in Estate of Charles Henry Caswell, on August 4, 1952.]

[Title of Tax Court and Cause.]

PRAECIPE FOR RECORD

To the Clerk of The Tax Court of the United States:

You are hereby requested to prepare and certify and transmit to the Clerk of the United States Court of Appeals for the Ninth Circuit, with reference to the Petition for review heretofore filed by the petitioner in the above-entitled cause, a transcript

of the record in the above-entitled cause, prepared and transmitted as required by law and by the rules of the said Court, and to include in the said transcript of record the following documents or certified copies thereof, to wit:

1. The docket entries of all proceedings before The Tax Court of the United States.
2. Pleadings before The Tax Court of the United States as follows:
 - (a) Petition for redetermination;
 - (b) Answer of the respondent.
3. The findings of fact and opinion of the Tax Court of the United States.
4. The decision of the said Court.
5. The stipulation of facts filed November 13, 1950, with all exhibits attached thereto.
6. The petition for review filed by the petitioner.
7. This praecipe.

You are also requested to transmit to the said Clerk of the said Court of Appeals the original stenographic transcript of the proceedings of the Division of the Tax Court of the United States in this cause held and had at San Francisco, California, on November 13, 1950.

/s/ WAREHAM C. SEAMAN,
SEAMAN & DICK,
Counsel for the Petitioner.

Received and filed T.C.U.S., August 4, 1952.

[Title of Tax Court and Cause.]

Docket Nos. 27017 and 27018

CERTIFICATE

I, Ralph A. Starnes, Chief Deputy Clerk of The Tax Court of the United States do hereby certify that the foregoing documents, 1 to 19, inclusive, constitute and are all of the original papers and proceedings before The Tax Court of the United States as set forth in the "Praeceptum for Record" on file in my office as the original record in the above-entitled proceedings and in which the petitioners in The Tax Court proceedings have initiated appeals as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceedings, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 15th day of August, 1952.

[Seal] /s/ RALPH A. STARNES,

Chief Deputy Clerk, The Tax
Court of the United States.

[Endorsed]: No. 13523. United States Court of Appeals for the Ninth Circuit. Estate of Wallace Caswell, deceased, Jennie J. Caswell, Administratrix, Petitioner, vs. Commissioner of Internal Revenue, Respondent; and Estate of Charles Henry Caswell, deceased, Earl W. Caswell, Administrator, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Petitions to Review Decisions of The Tax Court of the United States.

Filed August 29, 1952.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 13523

ESTATE OF WALLACE CASWELL, Deceased,
JENNIE J. CASWELL, Administratrix,
Appellant,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Appellee.

ESTATE OF CHARLES HENRY CASWELL,
Deceased, EARL W. CASWELL, Adminis-
trator,
Appellant,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Appellee.

STATEMENT OF POINTS AND
DESIGNATION OF RECORD

Now comes the petitioners, the Estate of Wallace Caswell, Deceased, and the Estate of Charles Henry Caswell, Deceased, by their attorney as undersigned, and state that the points on which they intend to rely as to the relief sought in this proceeding for review of the decision of the Tax Court of the United States, are as set forth in section IV of the

said petitions for review, the finding by the Tax Court that the issuance of Certificates of Indebtedness to the petitioners in 1945 represented income to them in that year, and the finding that the fair market value of the Certificates of Indebtedness was equal to their face amount at the date of issue in 1945.

The said petitioners having been granted a motion to consolidate for briefing and hearing, it is requested that only the record of the Estate of Wallace Caswell, Deceased, be included in the designation below of the record to be printed, and that the record of the Estate of Charles Henry Caswell, Deceased, be included therein only by reference.

The said petitioners designate as material to the consideration of the review subject of this proceeding all those parts of the records described in the petitioner Estate of Wallace Caswell, Deceased, praecipe for record under items one to seven, inclusive, of that document, this statement and designation, all of which items and exhibits are properly to be included in the record to be printed in this proceeding.

/s/ WAREHAM C. SEAMAN,
Attorney for Petitioners.

[Endorsed]: Filed October 1, 1952.

[Title of Court of Appeals and Cause.]

MOTION TO CONSOLIDATE FOR
BRIEFING AND HEARING

Appellants by their attorney, Wareham C. Seaman, move to consolidate their cases for briefing and hearing, on the ground that the issues are identical. In each, the question is whether the Certificates of Indebtedness issue to the Appellants in 1945 represented income in that year, and if so, what was the fair market value of the Certificate of Indebtedness to be included in the taxable income of each for the year 1945. The cases were so consolidated and tried in the Tax Court, with a common stipulation of all the facts.

/s/ WAREHAM C. SEAMAN,
Attorney for Appellants.

So Ordered:

/s/ ALBERT LEE STEPHENS,

/s/ WM. HEALY,

/s/ WALTER L. POPE,

United States Circuit Judges.

[Endorsed]: Filed October 2, 1952.

W. D. HOWLAND

NEW YORK

1876

THE HISTORY OF THE UNITED STATES

OF AMERICA

FROM 1776 TO 1876

BY

W. D. HOWLAND

NEW YORK

1876

THE HISTORY OF THE UNITED STATES

OF AMERICA

FROM 1776 TO 1876

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